

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

PLM-1
Goddard

18491

FILE: B-201946

DATE: June 16, 1981

MATTER OF: Mrs. Katie B. Keys - Retroactive Temporary Promotion

DIGEST: VA Food Service Worker, WG-3, whose position description provided for substituting for WG-4's, during their absences, seeks backpay under Turner-Caldwell, claiming detail to the WG-4 position for 528 days over 4-1/2 years - initially 2 days a week regularly and more during extended absences of WG-4's and full time last 115 days. Claim was timely filed with VA but part was over 6 years old when received in GAO. This part must be disallowed even if delay was fault of VA since 31 U.S.C. 71a bars without exception all claims not received in GAO within 6 years. Remainder of claim must also be disallowed in absence of evidence of any single period of detail exceeding 120-day limitation on VA's detail authority or of VA's intent to circumvent this limitation.

Mrs. Katie B. Keys, a food service worker (FSW) employed at the Veterans Administration (VA) Medical Center, Martinez, California, appeals the denial of her claim for a retroactive temporary promotion and backpay by our Claims Group.

Mrs. Keys contends she is entitled to backpay under Turner-Caldwell, 55 Comp. Gen. 539 (1975), affirmed 56 Comp. Gen. 427 (1977), which holds that an employee who is detailed to a classified position in higher grade for a period in excess of 120 days without Civil Service Commission approval is entitled to a retroactive temporary promotion and backpay for such period provided all requirements for such a promotion would have been met. She alleges that while she was assigned to an FSW, WG-3 position she performed the duties of an FSW, WG-4 position for a total of 528 days over a 4-1/2-year period extending from September 1973, to March 12, 1978. She states that initially

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she performed the duties of the WG-4 position on a part-time basis - 2 days a week regularly, and for longer periods when an incumbent of the WG-4 position was on vacation or extended sick leave - and on a full-time basis from November 18, 1977, to March 12, 1978, the date on which she was competitively promoted to the WG-4 position.

VA advises that the description of Mrs. Keys' WG-3 position provided that she relieve incumbents of the WG-4 position when they were on leave and that she did so regularly. The agency does not state how much time she spent on this relief work but it does confirm that she was detailed to the WG-4 position full time from November 18, 1977, to March 12, 1978, a period of 115 days. However, relying on William G. Atherton, B-173783.200, July 31, 1978, VA denied Mrs. Keys' claim on the ground that no single period of detail exceeded 120 days.

Although Mrs. Keys filed her claim with VA on September 11, 1978, it was not received in the General Accounting Office until June 5, 1980. Our Claims Group disallowed the portion of her claim accruing before June 5, 1974, because it was barred by 31 U.S.C. 71a, and disallowed the remainder on the same ground relied upon by VA.

Mrs. Keys appealed, contending in substance that (1) the in excess of 120-day requirement applies to temporary details and was not applicable to her because she was "permanently" detailed for 528 days over a 4-1/2-year period - albeit on a part-time basis for most of that time, and (2) since she filed her claim with VA timely and pursued it diligently, she should not suffer because it was delayed in reaching this Office.

Insofar as the second of these contentions is concerned, section 71a of title 31, United States Code, provides in pertinent part:

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"Every claim or demand * * * against the United States cognizable by the General Accounting Office * * * shall be forever barred unless such claim * * * shall be received in said office within 6 years after the date such claim first accrued * * *."
(Emphasis added.)

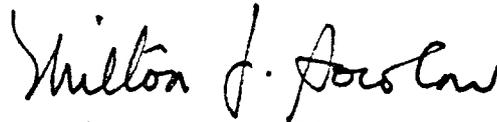
We have consistently held that in view of the explicit language of this statute the filing of a claim with an agency does not toll its running and that its barring provision may not be waived when a claim is not timely received in this Office even though the delay was the fault of the agency and not the employee. Freddie L. Baker, B-190841, February 15, 1978, and Donald B. Sylvain, B-190851, February 15, 1978. Therefore, the 6-year bar must be computed from the time Mrs. Keys' claim was received here, June 5, 1980, not the date it was filed with the VA, and our Claims Group properly disallowed the portion of her claim which accrued prior to June 5, 1974.

Mrs. Keys' other contention, that it was not necessary that any single period of her detail exceed 120 days because she was "permanently" detailed, as distinguished from temporarily detailed, is apparently derived from the provision in her position description that she substitute for absent WG-4's. Turner-Caldwell recognizes no such distinction. The significance of the 120 days is that, at the time in question, it was the limitation on the authority of an agency to detail an employee to a higher grade position for any one continuous period without the approval of the Civil Service Commission. It is only when an agency violates this limitation that the remedy provided by the decision may be invoked. Moreover, each period of detail is a separate detail and a series of separate details may not be aggregated for the purpose of acquiring or enhancing benefits under Turner-Caldwell in the absence of a clear showing of intent on the part of the agency to circumvent the limitation on its authority. Atherton, supra. We do not generally regard a

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provision such as that contained in Mrs. Keys' position description as evidence of such intent. Provisions in position descriptions that incumbents substitute for absent higher grade employees are not uncommon and they usually have purposes quite apart from any consideration of details such as solving temporary staffing problems, providing employees higher level experience, and in some instances supporting the classification of the positions. Accordingly, in the absence of evidence of any single period of detail exceeding the 120-day limitation on VA's detail authority or of VA's intent to circumvent this limitation, that portion of Mrs. Keys' claim which is not barred by 31 U.S.C. 71a must be disallowed.

In view of the foregoing the settlement action of our Claims Group disallowing Mrs. Keys' claim in its entirety must be sustained.



Acting Comptroller General
of the United States